



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 26 2011

Lieutenant Colonel James A. DeLapp
District Engineer
Nashville District Corps of Engineers
Attn: Marty Tyree (Regulatory Division)
3701 Bell Road
Nashville, Tennessee 37214

Subject : Individual Permit LRN-2010-0697, Birmingham Coal & Coke,
Posey Mill #2, in Franklin County, Alabama

Dear Colonel DeLapp:

The U.S. Environmental Protection Agency, Region 4, has reviewed the Individual Permit application LRN-2010-00697 for the proposed 677-acre Posey Mill #2 coal mine in Franklin County, Alabama. Impacts to jurisdictional waters of the United States include 14,855 linear feet (lf) of ephemeral streams, 34,855 lf of intermittent streams (49,710 lf total), 1.73 acres of open water impoundment and 0.62 acres of emergent wetlands. This project is within the United States Geographic Survey Ecoregion 68 of the major Appalachian geographic province. The applicant proposes to provide compensatory mitigation with a combination of on-site restoration during and after mining and purchase of mitigation credits from a U.S. Corps of Engineers approved mitigation bank.

The EPA previously corresponded with you regarding this project and expressed concern that the project does not comply with the Clean Water Act (CWA), supporting 404(b)(1) Guidelines and the 2008 Mitigation Rule (August 5, 2011 letter enclosed). To date, we have not received a response to our concerns. Therefore, the EPA finds this project will have substantial and unacceptable adverse impacts on an aquatic resource of national importance and we recommend denial of the project, as currently proposed. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement between the EPA and the Department of Army, Part IV, Paragraph 3(b) regarding Section 404(q) of the CWA.

Thank you for the opportunity to comment on this public notice. If you have any questions, please call Jim Giattina at (404) 562-9345.

Sincerely,

A handwritten signature in blue ink that reads "Gwendolyn Keyes Fleming".

Gwendolyn Keyes Fleming
Regional Administrator

Enclosure

cc: Mr. Marty Tyree, U.S. Army Corps of Engineers
Ms. Elizabeth Brown, Alabama Historical Commission
Mr. William Pearson, U.S. Fish & Wildlife Service
Mr. Matthew Marshall, U.S. Fish & Wildlife Service
Ms. Brandy Bowen, Alabama Department of Environmental Management
Mr. Eric Sanderson, Alabama Department of Environmental Management
Dr. Randall Johnson, Alabama Surface Mining Commission